

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SMITH SETZER & SONS, INC. 1/

Employer

And

Case No. 11-RC-6462

SHEET METAL WORKER'S LOCAL UNION #5 2/

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 3/
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 4/

All full-time and regular part-time sheet metal fabrication employees employed by the Employer at its metal plant facility located in Catawba, North Carolina, but excluding the dispatcher, dump truck drivers, tractor-trailer drivers, loaders, garage employees, maintenance employees, wire shed employees, pouring shed employees, concrete pipe manufacturing employees, managerial employees, office clerical employees, salesmen, and guards, professional employees and all other supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees

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engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 11 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office of the National Labor Relations Board, Region 11, 4035 University Parkway, Suite 200, P. O. Box 11467, Winston-Salem, North Carolina 27116-1467, on or before **November 23, 2001**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.).

If you have any questions, please contact the Regional Office.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **November 30, 2001**.

Dated November 16, 2001

at Winston-Salem, North Carolina

/s/Willie L. Clark, Jr.
Regional Director, Region 11

- 1/ The name of the Employer appears as amended at the hearing.
- 2/ The name of the Union appears as amended at hearing.
- 3/ The Employer, Smith Setzer & Sons, Inc., is a North Carolina corporation engaged in the manufacture of pipe at its facility in Catawba, North Carolina. During the preceding twelve-month period, the Employer, in the course and conduct of its business operations, purchased and received at its Catawba facility, goods and materials valued in excess of \$50,000 directly from points outside the State of North Carolina.
- 4/ Both the Employer and Petitioner filed briefs which have been carefully considered.

The Petitioner seeks a unit of all full-time and regular part-time sheet metal fabrication employees (herein called metal plant employees) employed by the Employer at its metal plant facility in Catawba, North Carolina. There are a total of seven employees who fall into that classification. The Employer contends that the only appropriate unit is one that encompasses employees engaged in all of its manufacturing operations at its Catawba, North Carolina location, including its concrete pipe manufacturing and related support operations, to wit: a dispatcher, two dump truck drivers, eight tractor-trailer drivers, four loaders, three garage employees, ten maintenance employees, eight wire shed employees, four pouring shed employees, and thirty-three concrete pipe manufacturing employees, in addition to the seven metal pipe employees. The parties agreed to exclude managerial employees, supervisory employees, office clericals, and salesmen from any unit found appropriate.

The Employer is a self-described “one-stop supplier” for concrete and metal pipe and related accessories that are used in the construction of storm drainage systems, highway construction, and similar projects. In addition to manufacturing concrete and metal pipe, the Employer also purchases and stores plastic pipe, which it resells to certain customers.

The Employer started its operations in the mid-1940’s solely as a manufacturer of concrete pipe. In 1986, the Employer branched out and built a new facility to manufacture metal pipe. The Employer presently has four manufacturing facilities: concrete production areas one through three, and the metal pipe manufacturing area (herein called the “metal plant”). The managerial and administrative office is located on one side of Highway 10, which is a public highway, and houses management, sales, clericals, and dispatch. The three concrete manufacturing buildings, as well as the wire shed, pouring shed, maintenance building, and garage, are all located in separate buildings on the same side of the road as the office, and enclosed by a fence. The metal plant is located on the other side of Highway 10, and is surrounded by a fence that is padlocked after hours.

The Employer is a closely-held family corporation. Members of the Setzer family hold the following managerial/supervisory positions. Neil Setzer is President and makes production and management decision in all operations. Jerry Setzer is a Vice President and assists Neil Setzer. Michael Setzer is the Vice President of Operations, assists Neil and Jerry Setzer in their functions, and also performs the corporate safety function. Mitchell Setzer is the Vice

President of Sales, and also handles customer relations. Cameron Setzer is also a Vice President and does sales, troubleshoots, and schedules maintenance.¹ In addition to the above-listed family members who hold managerial/supervisory authority, there are four additional supervisors who have the authority to hire, fire, and direct employees: John Watts, supervisor over concrete production area one; Billy Poteat, supervisor over concrete production areas two and three, the pouring shed, and wire shed; Darrel Scronce, supervisor over the maintenance department, and Max Lanier, supervisor over the metal plant. Those four individuals report directly to any one of the managerial/supervisory employees listed above.

Except as delineated below, the employees share some of the same benefits and working conditions. The Employer provides health insurance, without dependent coverage, to employees who pay half the cost. Employees receive one week's paid vacation the week of July 4 so long as they have been employed one year as of that date and have met the Employer's attendance standards. Employees also receive one week's unpaid vacation the week of Christmas. Vacation does not increase based on employee tenure. Regarding other benefits, it is entirely within management's discretion as to which individual employees receive raises, payment for holidays (although all employees are off on Easter, Memorial Day Labor Day, and Thanksgiving), and a Christmas bonus. The wage scale among the manufacturing areas (concrete pipe, pouring shed, wire shed, and metal plant) and the loaders is the same; those employees are considered general labor, receive on-the-job training, and start out at \$6.00 per hour, receiving a 50-cent hourly raise in thirty days. Hourly employees are paid overtime after forty hours and all employees are paid weekly. Employees retain their seniority if they transfer to a different work area. There is no pension or retirement plan, or paid sick leave.

The Employer operates one shift, Monday through Friday, with scheduled work hours of 7:00 a.m. to 4:30 p.m. Breaks are scheduled twice daily: from 9:00 a.m. to 9:15 a.m., and from 3:00 p.m. to 3:15 p.m. Lunch is scheduled from 12:00 p.m. to 12:30 p.m. There are no designated break or lunch areas, although there is a coke machine in front of the maintenance shop and a nearby store located a short distance from the Employer's premises. There is a microwave and refrigerator at the main office, and a microwave in the machine shop, garage, wire shop, and metal plant. There are no common restroom facilities. Employees punch time clocks that are located in the following areas: concrete production area one, concrete production area two (also shared by loaders, dump truck drivers, wire shed employees, and pouring shed employees), concrete production area three, maintenance, and the metal plant. With respect to clothing, a uniform rental service is available to both employees and supervisors after sixty days of employment, but less than half of the workforce uses that service. All employees except for the dispatcher and truck drivers are required to wear safety glasses. Pouring shed employees, drivers (when unloading), and concrete pipe employees are required to wear hard hats.

A number of functions, including payroll, budgeting, purchasing, order processing, accounts receivables and payables, and benefits, are all handled at the main office. The Employer also

¹ Carmen Setzer Davidson is a Vice President and non-supervisory assistant office manager.

maintains personnel files and time records at the main office. Neil and Jerry Setzer formulate the labor relations policies applicable to employees. Job applicants apply at the main office and are hired based upon need. Neil and Jerry Setzer evaluate employees annually on an unwritten basis to select the employees who will receive merit raises. In that regard, the Setzers seek input from an employee's supervisor if they are unfamiliar with the employee's performance, attendance, or other factors used in the evaluation. With respect to production needs, Michael and Cameron Setzer determine how much concrete pipe and metal pipe are produced in a given day.

As shown below, the dispatcher, dump truck drivers, tractor-trailer drivers, garage employees, and maintenance employees perform functions that are ancillary to the manufacturing process. A brief description of their functions, as well as any divergences from the standard terms and conditions of employment outlined above, is as follows.

The dispatcher receives orders from the office clerical staff and decides the orders to be shipped on particular days. The dispatcher generally directs and coordinates the work of dump truck drivers, tractor-trailers drivers, and loaders. The dispatcher also schedules those employees' time off. The dispatcher is a salaried employee who does not punch a time clock, and has an office in the main office building, which also houses management, sales, and office clericals. The dispatcher reports directly to upper management, and relays any concerns regarding discipline or performance of the employees he oversees. The dispatcher works past 4:30 p.m. approximately half the time, as a result of overseeing the work of the loaders.

There are two dump truck drivers who report to the dispatcher. One driver hauls gravel and sand from the quarry located in Hickory, North Carolina, to the Employer's jobsite. The other driver dredges and hauls sand from creeks where the Employer has drag lines set up and delivers the sand to the Employer. The materials handled by the dump truck drivers are used only in the concrete pipe manufacturing process. Dump truck drivers are required to have a Class A CDL license. They are not involved in the production process, and spend most of their time away from the Employer's facility. For pay purposes, the Employer considers dump truck drivers to be in a separate category. They start out at \$7.50 per hour with a \$.50 raise after thirty days.

There are eight tractor-trailer drivers who also report to the dispatcher. They deliver pipe (concrete, metal, and plastic) and other products of the Employer. Sometimes drivers transport different types of pipe at the same time such as concrete and metal pipe, or concrete and plastic pipe. The drivers unload pipe and other products at the customer site, but only occasionally assist with loading functions at the Employer's facility. Like dump truck drivers, tractor-trailer drivers are required to have a Class A CDL license, are not involved in the production process, and spend most of their time away from the Employer's facility. For pay purposes, tractor-trailer drivers do not punch a time clock and are paid a flat per-trip rate, averaging \$600 per week. They are not eligible for overtime, and do not work set hours. Rather, drivers are permitted to use their discretion in determining the time to leave in order to meet their delivery schedule. As a result, their hours vary widely and they start trips

anywhere from 1:00 a.m. to 7:00 or 8:00 am. There is virtually no substitution between dump truck drivers and tractor-trailer drivers except in emergencies.²

Four loaders load concrete pipe onto tractor-trailer trucks. Loaders only occasionally load at the metal plant and then only when that facility is closed and no metal plant employees are present. Loaders report to, and their work is overseen by, the dispatcher. Loaders work past 4:30 p.m. about half of the time, occasionally working as late as 7:00 p.m. As a result, management tacitly permits loaders to report to work as late as 8:00 a.m.

There are three garage employees who have their own work area in a separate garage. These employees maintain and repair equipment and vehicles that are involved in the transportation or loading of concrete and metal pipe such as forklifts, trucks, and trailers. One employee starts work at 7:30 a.m. Garage employees have mechanical skills and generally start at a higher rate of pay, sometimes as much as \$8.00 per hour.

There are ten employees who work in the maintenance shop. Maintenance employees repair and rebuild machines used in concrete and metal pipe production as well as perform trouble shooting duties. Maintenance employees may start working before 7:00 a.m. or as late as 7:15 a.m., and finish working as late as 6:00 p.m. Because of the nature of their work, they take their breaks as needed, rather than at scheduled times. Some maintenance employees have a starting rate of pay as high as \$7.50 or \$8.00 per hour; presently the highest paid maintenance employee makes \$14.00 per hour.

The duties of the employees who are involved in manufacturing are as follows. As set out above, all manufacturing employees are considered general labor, and have a starting wage rate of \$6.00 per hour. Manufacturing employees consist of concrete production employees (concrete pipe employees, wire shed employees, and pouring shed employees) and metal plant employees. There are no particular skills or qualifications that are required for hire and employees are trained on the job.

Regarding concrete pipe employees, as previously discussed, concrete pipe is manufactured in three separate buildings. Fourteen concrete pipe employees work in concrete production area one, eleven concrete pipe employees work in concrete production area two, and eight concrete pipe employees work in concrete production area three. Those three manufacturing areas produce pipe of different size and length. Concrete pipe employees utilize a number of different machines and equipment to manufacture concrete pipe including, among others, a pipe machine, crane, lay-down device, fork lift, and brush pipe. On the concrete production side, training is on the job. It takes approximately one year to learn to operate the pipe machine. Concrete pipe is stored on the concrete side of the Employer's facility.

² A tractor-trailer driver has occasionally functioned as a straight truck driver to deliver the Employer's products. A straight truck is a single axle or tandem axle truck. No one is regularly assigned to that duty. Presently the Metal Plant Supervisor drives a straight truck about the half the time that it is in operation; tractor-trailer drivers perform that duty the rest of the time.

The eight wire shed employees are housed in a separate building and manufacture the wire reinforcement cages used in the production of concrete pipe. Those employees bend wire into cages into a round shape and weld and staple them together. Pouring shed employees work in the pouring shed which is located behind the wire shed, and manufacture products which are used to connect different lines or sizes of concrete pipe.

As set out above, the seven metal plant employees work in a separate building, apart from all of the other employees. Those employees manufacture metal pipe. They utilize a number of different machines in metal pipe production such as a pipe machine, dimple band machine, slitter, van roller, band spot welder, wire welder, re-saw, and re-rollers. As with concrete production, training takes place on the job. It takes approximately one year to learn how to operate the metal pipe machine, which is known as the IMW-5 spiral mill. Unlike concrete pipe employees, metal plant employees generally load the metal pipe onto tractor trailers for customer delivery. Metal pipe is stored at the yard of the metal plant. In addition, the Employer stores all of the plastic pipe that it purchases for resale to customers at the metal plant yard. The metal plant employees also load plastic pipe into tractor trailers. The Metal Plant Supervisor has an office at the metal plant in which he maintains quality production control records.

Regarding unit determinations, Section 9(b) of the Act provides that the Board “shall decide in each case whether . . . the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof” It is well-established that the Board need only determine whether the petitioned-for unit is an appropriate unit, even though it may not be the only appropriate unit, or most appropriate unit. Harron Communications, 308 NLRB 62, 63 (1992). The starting point in making unit determinations is to examine the unit sought by the Petitioner. Dezcon, Inc., 295 NLRB 109, 111 (1989). If that unit is appropriate, the inquiry ends. Id. In analyzing whether a unit is appropriate, the Board examines the “community of interest” of the particular employees involved, including “the method of wages; hours of work; employment benefits; nature of supervision; difference in training and skills; interchange of employees; functional integration; history of bargaining and extent of organization.” Vincent M. Ippolito, Inc., 313 NLRB 715, 717 (1994) (citing Kalamazoo Paper Box Corp., 136 NLRB 134 (1962)), enforced mem. 54 F.3d 769 (3d Cir. 1995). In addition, the Board has articulated the principle that a single-facility unit is presumptively appropriate “unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated that it has lost its separate identity.” J & L Plate, 310 NLRB 429, 429 (1993), citing Dixie Bell Mills, 139 NLRB 629, 631 (1962). The burden of rebutting this presumption rests on the party requesting a multi-facility unit. Id. To determine whether the presumption has been overcome, “the Board looks to such factors as prior bargaining history, the geographical proximity to other facilities of the same employer, the degree of day-to-day managerial responsibility exercised by the [local] facility management, the frequency of employee interchange, and whether the requested single-facility-unit constitutes a homogenous, identifiable and distinct employee grouping.” Centurion Auto Transportation, 329 NLRB 394, 400 (1999), citing Red Lobster, 300 NLRB 908, 910 (1990).

Moreover, even in the context of a single manufacturing plant or facility, although a plant-wide unit is presumptively appropriate, a separate unit may be found appropriate when there is a “readily identifiable group with common interests distinct from other employees.” Bartlett Collins Company, 334 NLRB No. 76 (2001) slip op. at 4 (Board rejects employer’s contention of a wall-to wall unit and finds unit of mold repair and mold cleaning employees to be appropriate in a manufacturing facility). See also Bagdad Copper Co., 144 NLRB 1496, 1497-1498 (1963) (separate unit of pit department employees at copper mine and concentrating mill found appropriate); accord Herron Testing Laboratories, Inc., 182 NLRB 508, 508-509 (1970) (separate unit of drilling department employees appropriate). Finally, in making unit determinations, “[t]he Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications.” Bartlett Collins Company, 334 NLRB No. 76, slip op. at 1.

As an initial matter, it is not clear whether the Petitioner is continuing to assert, as it did at hearing, that the metal plant employees constitute a craft unit. In that regard, I conclude that the metal plant employees do not constitute a craft unit. Thus, the metal plant employees are considered general laborers who receive on-the-job training. They do not participate in any apprenticeship or formal training program, do not have any licenses or certifications, nor do they have the type of skills, extensive experience, or specialized tools or equipment ordinarily possessed by employees in cases in which the Board has found craft status. See generally Burns & Roe Services Corp., 313 NLRB 1307, 1308 (1994); Bartlett Collins Company, 334 NLRB No. 76, slip op. at 2.

The inquiry then turns to whether the petitioned-for unit is presumptively appropriate under the single-facility presumption. In this regard, the Employer contends on brief that it has met its burden of rebutting the single-facility presumption. Contrary to this contention, I find that the record evidence fully supports the single-facility presumption and that metal plant employees at the metal plant constitute an appropriate unit on this basis. This conclusion is supported by the following factors.

As a threshold matter, I note that the metal plant employees are physically located in a separate facility across a public highway away from the employees whom the Petitioner seeks to exclude. This facility was built over forty years after the Employer first opened its concrete pipe manufacturing facility. The metal plant employees do not share parking facilities with the other employees, but park near the metal plant. On a typical day, metal plant employees simply park outside the metal plant, work all day, leave for home, and never interact with any employees other than their metal plant co-workers.

In addition, the metal plant employees are separately supervised by the Metal Plant Supervisor, who maintains an office at the metal plant. Moreover, there is no overlap at the immediate supervision level. Thus, the Metal Plant Supervisor does not supervise other employees, and when he is not available, supervisors in the other areas do not substitute for him. As set out above, the Employer’s Vice-President testified at hearing that the Metal Plant Supervisor has the authority to hire, fire and direct employees at the metal plant.

The record also shows that metal plant employees manufacture a distinct product, that is, metal pipe. Although there are similarities between some of the job positions in the concrete manufacturing facilities and the metal plant, the record demonstrates that the manufacturing processes and machines used in each facility are different. The record reflects that, although the skills needed to operate some of the manufacturing machines are fairly easily acquired, it takes about a year for an employee to learn to operate the pipe machines both on the concrete side and in the metal plant. I note that the jobs of other classifications of employees, whom the Employer contends should be included in the unit, particularly the garage employees, maintenance employees, and drivers, require completely different skills from those of the employees operating production machinery.

As further shown above, although it is true that there are similar benefits and working conditions among all the employees, there are also some significant differences. That is, employees are eligible for the same health insurance and vacation benefits. They also are all subject to the same discretionary management determinations concerning raises, bonuses, and paid holidays, which results in differences in the actual wage structures of employees. As further shown, however, the metal plant employees, concrete production employees, garage employees, and dump truck drivers work the same hours, but the dispatcher, loaders, maintenance employees, and tractor-trailer truck drivers work different hours. In addition, although the wage scale among the concrete production employees, metal plant employees, and loaders is the same, garage employees, maintenance employees, and dump truck drivers have a higher starting wage. Also, in that regard, tractor-trailer drivers are paid by the trip and average a substantially higher weekly wage rate in comparison to other employees, and the dispatcher is salaried.

The record shows that there is limited day-to-day work-related contact or interchange between the metal plant employees and the classifications sought to be excluded. Thus, as shown, employees either work in separate facilities or, in the case of drivers, work away from the plant, and the employees who work on-site do not share common break or lunch areas. In regard to work-related interactions, the dispatcher interacts primarily with the loaders and drivers, and also talks to the Metal Plant Supervisor or, on occasion, to one or two of the metal plant employees. There appears to be virtually no work-related contact between the metal plant employees and dump-truck drivers or loaders. As shown, metal plant employees load the tractor-trailers, and the only work done by the tractor-trailer drivers is to occasionally strap down pipe onto a trailer. There is occasional interaction between metal plant employees and the garage employees, depending on whether repairs are needed on the lifts at the metal plant. Regarding maintenance, one metal plant employee maintains and repairs some of the metal plant machines, and, in that connection, consults with maintenance. In other circumstances when maintenance is required on metal plant machinery, maintenance employees interact primarily with the Metal Plant Supervisor, with the metal plant employee who performs some maintenance, or with one additional metal plant employee. Maintenance employees come to the metal shop to repair machinery, on average, two to three times a week.

The record also shows negligible temporary substitution or interchange. In particular, I observe that in terms of production work, employees from the concrete facilities do not

normally substitute for employees in the metal plant and vice versa. This is true even when there is a slowdown in production in one facility or the other. The record discloses that there have been only a few instances of temporary interchange. For example, on one occasion a metal plant employee welded some cages in the wire shed. The record also shows that this same employee helped bundle things up for the concrete side for loading, although the record does not indicate whether this has occurred on more than one occasion. On another occasion, a second metal plant employee helped the maintenance department build car systems for an eight-foot pipe plant. The record does not establish how long this work took. On another occasion, an employee from concrete production went to the metal plant and ran a re-roller all day. On another occasion, a loader went to the metal pipe area to learn how to operate the pipe machine. The record does not show how long he stayed at the metal plant. Similarly, a concrete pipe employee went to the metal plant for half a day to learn how to operate the pipe machine. A garage employee went to the metal plant during a period of heavy orders and helped re-roll pipe for one week. A concrete pipe employee went to the metal plant to repair the roof on the storage shed. The record does not indicate the approximate dates on which these instances of temporary interchange occurred, nor does it establish the period of time over which the foregoing examples took place, that is, within the past month, year, or so on. The record also shows that employees from the concrete production areas assist in cleaning the tar pit located at the metal plant, but there is no indication of how many employees are involved, nor how often this occurs.

The burden is on the party challenging the appropriateness of a single-facility unit to demonstrate the amount of interchange. New Britain Transportation Co., 330 NLRB No. 57, slip op. at 2-3 (1999); J& L Plate, 310 NLRB 429, 429 (1993); Red Lobster, 300 NLRB 908, 910-11 (1990). The Board has emphasized that the context for employee interchange is particularly significant, and further has held that temporary transfers rise to the level of employee interchange “only where there is evidence that a significant portion of the workforce is involved....” New Britain Transportation, 330 NLRB No. 57, slip op. at 2. See also Capri Sun, 330 NLRB No. 158 slip op. at 3 & n. 8 (2000) (Board places burden on party challenging appropriateness of unit to produce evidence of interchange). Applying this legal principle to the foregoing facts, I find that the evidence of employee interchange is insufficient to afford a basis for rebutting the single-facility presumption, both because the record does not provide an adequate basis for quantifying the instances of interchange, and because the record does not demonstrate that a significant portion of the workforce is involved in interchange.

With respect to permanent transfers, the record simply is contrary to the Employer’s contention that six of the eight current metal employees transferred from the concrete facility to the metal plant. The record does show that two metal plant employees apparently transferred from the wire shed, and that these transfers apparently took place two years ago.³ The record also indicates that a third metal plant employee previously worked in concrete production areas. This appears to refer to a temporary interchange of the third employee,

³ The Employer’s evidence is equivocal as to whether two or three transfers occurred from the concrete side to the metal side. To the extent that the following action can be considered a transfer, a former unnamed employee reapplied for employment and was hired for the metal plant in April or May, 2001.

rather than a permanent transfer, but the record is not clear. Nor does the record reflect the work that was involved, when that work occurred, or whether it occurred on more than one occasion. The Employer also appears to be including the Metal Plant Supervisor in its transfer count, but he is not a bargaining unit employee. In addition, a fourth metal plant employee cannot properly be considered a transfer as, upon being hired, he went to the metal plant after working for only about 20 minutes on the concrete side. As previously discussed, another metal plant employee, who did not transfer from the concrete side, consults with and assists maintenance with respect to the repair/maintenance of metal plant machinery, and helped the maintenance department build car systems for an eight-foot pipe plant. I note also that, two years ago, an employee transferred from the metal plant to the concrete side. In any event, regardless of the exact number of transfers, the Board has long regarded permanent transfers to be a less significant indication of actual interchange than temporary transfers. See Red Lobster, 300 NLRB at 910.

Although the Employer demonstrated a certain degree of functional integration of its operations, I find that that integration is not so substantial that it compels the inclusion of the disputed employees. The record demonstrates that the concrete manufacturing facilities and the metal plant operate largely independently. Thus, the metal and concrete facilities are physically separated and produce a different product. There is no commingling or integration during the production process and finished products are stored separately at their respective facilities. A slowdown or decrease in orders on the concrete side does not affect the metal plant and vice versa, and as previously discussed, employees are seldom shifted due to workload fluctuations. See Funky, Inc., 254 NLRB 372 (1981) (designers, patternmaker, and sample maker not required to be in unit of production employees of garment manufacturer; among other things, the Board found an insufficient degree of functional integration to dictate the inclusion of the excluded employees). See also Stow and Davis Furniture Co., 92 NLRB 80, 81 & n.5 (1950). There the employer operated a two-facility plant in which plant no. 1 was devoted to wood-working and assembling operations, and plant no. 2—located less than a mile from plant no.1—manufactured a number of items. In determining that a unit limited to plant no. 2 was appropriate, the Board noted that the two plants were physically separated, produced different products, and had limited integration in that only 20% of the products in plant no. 2 were assembled in plant no.1.

Finally, I note that here there is no bargaining history. As well, no other union has sought to represent the Employer's employees on a broader basis.

Cases relied upon by the Employer to support its argument that the only a multi-facility unit is appropriate are distinguishable. In Waste Management of Washington, 331 NLRB No. 51 (2000), the Board found appropriate a two-facility unit comprised of rental service employees rather than the single-location unit sought by petitioner, despite a 42-mile distance between the employer's two facilities. There, however, the employees shared common immediate supervision and performed the same job duties at both sites. In Lutheran Welfare Services, 319 NLRB 886, 886-887 (1995), the employer operated two facilities which provided skilled and intermediate patient care and were separated by a parking lot used by employees and patients. In that case, the Board found that only a two-facility unit was appropriate, relying on

the common immediate supervision of employees and substantial interchange between employees at the two facilities. In Acme Markets, 328 NLRB 1208, 1208-1209 (1999), the Board found that the only appropriate unit was the Employer's pharmacy employees in a four-state area rather than three separate units in three of those states. Among other things, aside from state-licensing requirements which differed from state to state, the skills, training, job responsibilities, and benefits among the employees were identical. In Coplay Cement Company, 288 NLRB 66, 66-68 (1988), the Board found that the only appropriate unit was a three plant unit rather than a two-plant unit and single plant unit sought by the petitioner. There, all three plants were engaged in the manufacture of cement products. The Board found substantial interdependence between the facilities in the manufacture of cement products, as well as substantial interchange.

I conclude, therefore, that the Employer has not rebutted the single-facility presumption, as the record does not demonstrate that the metal plant "has been so effectively merged into a more comprehensive unit, or is so functionally integrated that it has lost its separate identity." J&L Plant, 310 NLRB at 426. Although the factors of centralized control of labor relations and administrative functions, as well as the close physical proximity of the facilities do provide support for the Employer's contention, I find that these factors are not dispositive. In this regard, the record establishes that the Metal Plant Supervisor possesses a significant measure of local autonomy, as evidenced by his authority to hire, fire and direct the work of metal plant employees. The Board has held that centralized control over personnel and labor relations "is not sufficient to rebut the single-location presumption where the evidence demonstrates significant local autonomy over labor relations." New Britain Transportation Co., 330 NLRB No. 57, slip op. at 1. I find further that the factors relied upon by the Employer are outweighed by the following factors: the separate physical location and history of the metal plant; separate and autonomous supervision; production of a different product; minimal interchange; limited functional integration; lack of bargaining history; and the fact that no other union seeks to represent the employees on a broader basis. I find, therefore, that the petitioned-for unit is appropriate as a single facility.

Moreover, even if the Employer's operations were viewed as one overall facility, encompassing all of the operations, the same result obtains under community-of-interest standards. That is, the petitioned-for unit is appropriate based upon metal plant employees' separate location, separate supervision, production of a different product, minimal interchange or contact, limited functional integration, lack of bargaining history, and the fact that no other union seeks to represent the employees on a broader basis. See for example Bartlett Collins Co., 334 NLRB No. 76, slip op. at 2-3 (2001) (separate unit of mold-repair and mold-cleaning employees appropriate rather than broader unit including production employees; the employees performed a distinct function, were physically located in the basement of the employer's manufacturing facility, were separately supervised, had limited contact with other employees, and the record showed limited transfers into the mold department from other departments and no temporary interchange); Herron Testing Laboratories, Inc., 182 NLRB at 508-509 (separate unit of drilling department employees appropriate rather than unit consisting of employer's ten departments despite centralized personnel policies and evidence of interchange; drill department occupied a separate room, drilling employees were separately

supervised with supervisors having authority to hire and fire, spent most of their time away from the plant, and performed a distinct function—obtaining soil samples—rather than the testing engaged in by other employees); Audiovox Communications Corp., 323 NLRB 647, 650-651 (1997) (separate unit of cellular phone technicians appropriate rather than broader plant-wide unit despite frequent contact between employees due to interconnectedness of work; among other things, technicians had superior skills compared to most of the other employees, worked in distinct area of plant, and were separately supervised); Washington Palm, Inc., 314 NLRB 1122, 1126-1129 (1994) (separate unit of nontipped restaurant employees appropriate rather than all food and beverage employees despite significant contact between nontipped employees and other employees and high degree of functional integration; nontipped employees worked in a separate area, were separately supervised, performed different functions, and had a different compensation system). I note that in regard to the factor of separate supervision, here the record shows that the Employer's four supervisors retain some autonomy and discretion in that they have authority to hire, fire, and direct employees. See Herron Testing Laboratories, 182 NLRB at 508-509 (although employer's personnel policies applied to all ten of its departments, a separate unit of drilling department employees appropriate when, among other things, employees were separately supervised and supervisor had authority to hire and fire); Calivogue Sportswear, 96 NLRB 228, 229 (1951) (same).

In regard to a community-of-interest analysis, the Employer's reliance on Hotel Services Group, Inc., 328 NLRB 116, 116-117 (1999), is misplaced. In that case, the Board found that a unit limited to licensed massage therapists was inappropriate, despite the factor of separate supervision. In including other licensed personnel as well, the Board found a community of interest in the broader unit in that, among other things, the employees were all licensed, did similar work, and had substantial interchange. Those factors are not present here. Likewise, in Transerv Systems, Inc., 311 NLRB 766, 766-67 (1993), the Employer provided a document and small package delivery system service. In determining that a petitioned-for unit of bicycle messengers did not share a sufficiently distinct community of interest, despite the factor of separate immediate supervision, the Board noted, among other things, that a majority of the deliveries required both a driver and a bicycle messenger, demonstrating both a high degree of functional integration as well as substantial contact between the two groups.

Further, the cases cited by the Employer do not support its proposition that drivers, maintenance, and garage employees must be included in the unit. The Board's decision in Capri Sun, Inc., 330 NLRB No. 158 (2000) concerned the issue whether a separate maintenance unit was appropriate. In E.H. Koester Bakery Co., 136 NLRB 1006, 1011-1012 (1962), the Board concluded that truck drivers were not required to be included in the petitioned-for unit of production and maintenance employees. The Board found that truck drivers transported the employer's product rather than engaged in production; had different hours and working conditions; spent most of their time away from the plant; had little contact with the other employees; and had no interchange with other employees. The Board reached the opposite conclusion in Jero Steel Treating, Inc., 182 NLRB 522, 533 (1970) and found that truck drivers were required to be included in a production and maintenance unit. There, however, the drivers spent one and one-half hours to two hours a day at the plant, and like the

other unit employees, punched the same time clock, were hourly paid, eligible for overtime, occasionally helped wrap parts for delivery, had regular contact with some of the unit employees, and unit employees replaced vacationing truck drivers. Those factors are not present in the present case.

Based on the foregoing, I find that the petitioned-for unit is appropriate for purposes of collective bargaining.

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